Procter & Gamble v. *U. S.*, 225 U. S. 282, 297. And the Panama Canal Act has expressly declared that the Commission's finding on the question of competition shall be final. 37 STAT. AT LARGE, 566. Congress has thus put beyond a court's review the decision of a body of experts on this involved technical subject. But the complainant's case must also fall on another ground. The district courts have been given the power vested in the recently abolished Commerce Court to "enjoin, set aside, annul or suspend" the Commission's orders. 38 STAT. AT LARGE, 219; 36 STAT. AT LARGE, 539. By judicial interpretation this power to review has been limited in this class of cases to orders made to a carrier that it act affirmatively. *Procter & Gamble* v. *U. S.*, *supra*. Any other interpretation, which would give the district courts by an exercise of original action the power to enforce their conceptions as to the meaning of the Act on subjects in their nature administrative, would greatly tend to nullify the benefits derived from the existence of the Commission as a permanent body for investigation and administration. The order in the principal case is clearly negative, since with or without it the railroad must cease to run boats or else pay the penalty provided by Congress.

INTERSTATE COMMERCE — INTERSTATE COMMERCE COMMISSION — REGULATION OF RATES — ELIMINATION OF WATER COMPETITION BY NATURAL CAUSES. — Certain railroads on applications to the Interstate Commerce Commission were allowed to reduce coast to coast rates below those to intermediate points, so as to meet water competition through the Panama Canal. Slides for several months had stopped traffic through the canal. Because of the greater profit in foreign commerce it was apparent that this traffic would not be resumed for several months. Section 4 of the Interstate Commerce Act provides in part that when a railroad shall reduce its rates in competition with a water carrier, it shall not be permitted to increase them except on grounds other than the elimination of water competition. The shippers of intermediate points seek to have the former applications reopened for further consideration and readjustment. *Held*, that the application will be reopened. *In the Matter of Reopening Fourth Section Applications*, 40 Int. Com. Rep. 35.

For a discussion of the principles involved in the decision, see NOTES, p. 276.

LIBEL — PUBLICATION — DOES AN INTERCEPTED LETTER CREATE LIABILITY FOR PUBLICATION. — The defendant sent a letter to a friend containing statements defamatory of the plaintiff. The friend never saw the letter, but his father opened and read it. The plaintiff sues for this publication. *Held*, that the defendant is not liable. *Powell* v. *Gelston*, [1916] 2 K. B. 615.

Upon publication of a libel, the liability of the publisher as regards the falsity of the words, their reference to the injured party, and their defamatory content, would seem to be absolute. *Hulton* v. *Jones*, [1910] A. C. 20; *Campbell* v. *Spottiswoode*, 3 B. & S. 769. See *Neville* v. *Fine Arts, etc. Co.*, [1895] 2 Q. B. 156, 168. *Contra, Hanson* v. *Globe Newspaper Co.*, 159 Mass. 293, 34 N. E. 462; *Jones* v. *Polk & Co.*, 190 Ala. 243, 67 So. 577. See 29 HARV. L. REV. 533. But as regards the publication itself of the libel, an element of fault appears to be necessary to create liability. See *The King* v. *Paine*, 5 Mod. 163, 167. The defendant is liable if the writing came into circulation through his negligence or failure to take proper precautions to prevent it. *Vitzetelly* v. *Mundie's Co.*, [1900] 2 Q. B. 170; *Thorley* v. *Lord Kerry*, 4 Taunt. 355. *A fortiori*, an intended publication creates liability. But in the principal case the intended publication never took place, and negligence seems not to have been present, since the opening of the letter by the father could not have been foreseen. In the criminal law the intent to produce one result will create responsibility for another proximately caused, though unintended. *Gore's Case*, 9 Co. 81 *a*. But that is not the theory of the law in civil actions. Perhaps, however, the neces-

sary culpability may be drawn from a closer analysis of the intent here presented. In fact the intent is twofold — being primarily to publish the letter to the friend, and secondarily to injure the plaintiff by publishing the libel. If the letter had been sent to one newspaper, and it were intercepted and published by another, surely the main intent being to publish, and the method of publication secondary, culpability would ensue. Whether, in the principal case, the secondary intent to injure by the publication is sufficiently strong to create liability, is a question of degree. *Cf. Fox* v. *Broderick*, 14 Ir. C. L. Rep. 453.

LIBEL AND SLANDER — ACTS AND WORDS ACTIONABLE — SENDING CARD OF RIVAL UNDERTAKER TO FAMILIES IN WHICH THERE IS SERIOUS ILLNESS. — Hughes and the defendant were rivals in the undertaking business, having no other local competitors. The defendant printed and sent to families in which there was at the time serious illness the following card: "Bear in mind our Undertaking Department. Satisfaction guaranteed. [Signed] H. L. Hughes." Hughes sues for libel. *Held*, that defendant's demurrer be overruled. *Hughes* v. *Samuels Bros.*, 159 N. W. 589 (Ia.).

The written statement in this unique case, plus its necessary implications, amounts to this: "I, [the plaintiff], solicit your business by this card." Such a statement is certainly untrue, and is made with malice; but it apparently does not come within the generally accepted limits of libelous words, since, taken by itself, it can injure neither the plaintiff's reputation nor his business. See ODGERS, LIBEL AND SLANDER, 5 ed., 2. It becomes libelous, however, because of an extrinsic circumstance, the time at which it is published. But any statement must need extrinsic circumstances to become a libel. An accusation of theft, for instance, is libelous only because of that extrinsic circumstance, the institution of private property. Accordingly it is submitted that what extrinsic circumstances are incorporated into a written statement is merely a question of degree, and that the statement in the principal case is rightly held libelous. *Morrison* v. *Ritchie & Co.*, [1902] 4 Sc. Sess. Cas. 645. *Cf. Rocky Mountain News Printing Co.* v. *Fridborn*, 46 Colo. 440, 104 Pac. 956; *Fitzpatrick* v. *Age-Herald Pub. Co.*, 184 Ala. 510, 63 So. 980; *Pavesich* v. *New England Life Ins. Co.*, 122 Ga. 190, 220, 50 S. E. 68, 81. In the principal case the court rests the decision upon the broad principle that to injure another intentionally without justification is a tort, and, where the instrument of injury is the publication of written words, a libel. Thus the law of libel is at once rationalized and made an integrated part of our modern law of torts. See 29 HARV. L. REV. 559. The principal case is perhaps the first to announce such a doctrine of libel, formerly only an action on the case having been allowed for such torts as these. ODGERS, LIBEL AND SLANDER, 5 ed., 77 *et seq.* But whether or not the case is properly called one of libel, recovery is justified. For there is certainly intended injury, justified if at all by competition; and competition by means of telling lies is hardly to be protected.

MARRIAGE — NULLIFICATION — RIGHT TO DISCONTINUE ACTION FOR ANNULMENT. — A husband brought a bill for the annulment of his marriage. Subsequently he moves for leave to discontinue the action. *Held*, that the motion be denied. *Ginther* v. *Ginther*, 56 N. Y. L. J. 132 (Sup. Ct., App. Div.).

A suitor has a right before the final decision to discontinue any action or proceeding instituted by him, if no rights have accrued to others. *In re Butler*, 101 N. Y. 307, 4 N. E. 518. But where there is a public interest in the correct adjudication of the controversy the court may refuse to allow leave to abandon the action. So one who contests an election is refused permission to discontinue his contest. *Miles* v. *Macon*, 188 S. W. 313 (Mo.). See 24 HARV. L. REV. 673. In divorce suits the rights of the parties to the record are not alone to be con-